

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 7

NOTE : Answer **ALL** Questions.

1. Read carefully the following order passed by an Adjudicating Officer of the Securities and Exchange Board of India :

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. JJ/AM/AO-35/2014]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of : Ms. Rosy
(PAN - XXXXXXXXXXX)

In the matter of : Fantastic Limited

FACTS OF THE CASE :

- (i) Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') carried out an examination in the scrip of **Fantastic Limited** (hereinafter referred to as '**Company**'). The shares of the Company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as '**BSE**'). It was observed that Ms. Rosy (hereinafter referred to as '**Noticee**') was holding 1,64,800 shares of the Company (representing 5.03% of shareholding of the Company) in the quarter ending March, 2005. It was also observed that the Noticee sold 50,000 shares (representing 1.53% of shareholding of the Company) on 31st May, 2005 and 1,00,000 shares (representing 3.05% of the shareholding of Company) on 3rd June, 2005 in off-market; thereby bringing down her holding to 0.45%. However, it was alleged that the Noticee failed to make disclosures as required under Regulation 13(3) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

- (ii) The undersigned was appointed as the Adjudicating Officer *vide* order dated 16th January, 2014 and the said appointment was conveyed *vide* proceedings of the whole-time member dated 22nd January, 2014 to inquire and adjudge under Section

15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992**'), the alleged violation of provisions of Regulation 13(3) read with Regulation 13(5) of PIT Regulations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

- (iii) A Show Cause Notice (hereinafter referred to as '**SCN**') in terms of the provisions of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') was issued to the Noticee on 31st January, 2014, calling upon the Noticee to show cause why an inquiry should not be held against her under Rule 4(3) of the Adjudication Rules and penalty be not imposed under Section 15A(b) of SEBI Act, 1992 for the alleged violations.
- (iv) The aforesaid SCN was duly delivered to the Noticee on 1st February, 2014. Subsequently, *vide* letter dated 6th February, 2014, the Noticee acknowledged the receipt of the SCN and requested for additional 15 days' time to submit reply. Thereafter, *vide* Notice of Inquiry dated 21st February, 2014, the Noticee was given an opportunity of personal hearing on 5th March, 2014 and the Noticee was advised to submit her reply, if any, on or before 5th March, 2014.
- (v) On the scheduled date of personal hearing, Mr. James, Authorised Representative (hereinafter referred to as '**AR**') of the Noticee appeared and made the following submissions :
- "We are making submissions vide letter dated 4th March, 2014. Further, the Company was under BIFR and was discharged in September, 2009. Since the Company was in difficult times, no records were maintained and our interest was only to revive the Company by transferring the shares to the brother-in-law of the Noticee. In view of our submissions, a lenient view may be taken. We have no further submissions to make in the matter."*
- (vi) The Noticee had made the following submissions *vide* her letter dated 4th March, 2014 :
- "I was the wife of one of the promoter shareholders of Fantastic Limited and the company was controlled and managed by AOIL. Due to certain family settlements, the entire shareholding of the company was finally transferred to Dr. AK. In this process, the shares held by me were disposed of by way of inter se transfers and market transactions in the year 2005. Since the transaction took place many years ago, I do not recollect whether any disclosures were made by me to the stock exchange under SEBI (Prohibition of*

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Insider Trading) Regulations and I do not have any copies of the same. In case, there has been no filing, it has been only due to sheer ignorance of the requirement and there was no malafide intention. Further, I would also like to submit that there was no change in control of the company and the control remained within our own family after these sales. On the basis of the above submissions, I request you to kindly excuse the non-filing, if any, and drop any further proceedings against me."

ISSUES FOR CONSIDERATION

- (vii) After perusal of the material available on record, I have the following issues for consideration, viz.,
- A. Whether the Noticee has violated provisions of Regulation 13(3) read with 13(5) of PIT Regulations ?
 - B. Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992 ?
 - C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 ?

FINDINGS

- (viii) On perusal of the material available on record and having regard to the facts and circumstances of the case, I record my findings hereunder :

ISSUE 1: Whether the Noticee has violated provisions of Regulation 13(3) read with 13(5) of PIT Regulations ?

- (ix) From the SCN, I note that the Noticee was holding 1,64,800 shares of the Company (representing 5.03% of the shareholding of the Company) in the quarter ending March, 2005. I also note that the Noticee sold/transferred 50,000 shares (representing 1.53% of the shareholding of the Company) on 31st May, 2005 and 1,00,000 shares (representing 3.05% of the shareholding of the Company) on 3rd June, 2005 in off-market. Therefore, the Noticee reduced her shareholding in the Company from 5.03% to 0.45%. Such reduction obliges the Noticee to make required disclosure to the Company under Regulation 13(3) of PIT Regulations within the time-limit prescribed under Regulation 13(5) of PIT Regulations. I note that the Noticee, in her reply dated 4th March, 2014, has submitted that due to certain family settlements the shares held by her were disposed by way of *inter se* transfers and market transactions in the year 2005. During the course of personal hearing, the AR of the Noticee submitted that the Company was under BIFR

and as the Company was in difficult times, no records were maintained and interest of the Noticee was only to revive the Company by transferring shares to the brother-in-law of the Noticee. However, I am of the considered opinion that these do not absolve the Noticee from her duty of making necessary disclosures under Regulation 13(3) of PIT Regulations.

- (x) In view of the above, I hold that the Noticee was under an obligation to make the required disclosures under Regulation 13(3) of PIT Regulations, which the Noticee failed to do. Therefore, the Noticee has violated the provisions of Regulation 13(3) read with Regulation 13(5) of PIT Regulations.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992 ?

- (xi) I note that the Noticee, in her reply dated 4th March, 2014, has submitted that "*In case, there has been no filing, it has been only due to sheer ignorance of the requirement and there was no malafide intention. Further, I would also like to submit that there was no change in control of the company and the control remained within our own family after these sales.*" However, the Hon'ble Supreme Court of India in Civil Appeal No.9523-9524 of 2003 in the matter of SEBI vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC), has held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant.*"
- (xii) As already observed, the Noticee disposed substantial shares of the Company but failed to make disclosures as required under Regulation 13(3) read with 13(5) of PIT Regulations. Hence, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 ?

- (xiii) While imposing monetary penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992.
- (xiv) In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. The Noticee was under obligation to make the necessary disclosure to the Company which, in turn, would have made the necessary

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disclosures to BSE, in terms of provisions of PIT Regulations. However, as stated earlier, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making disclosure, the Noticee has concealed the vital information which is detrimental to the interest of investors in securities market. Further, there is nothing on record to indicate that the default of the Noticee was repetitive.

- (xv) In the forgoing paragraphs, it is now established that the Noticee failed to make necessary disclosures under Regulation 13(3) read with 13(5) of PIT Regulations. Considering the facts and circumstances of the case and the violation committed by the Noticee, I find that imposing a penalty of ₹4,00,000 (Rupees Four Lakh only) for violation of Regulation 13(3) read with 13(5) of PIT Regulations on the Noticee would be commensurate with the violation committed by her.

ORDER

- (xvi) In terms of the provisions of the SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹4,00,000 (Rupees Four Lakh only) under Section 15A(b) of SEBI Act, 1992 for violation of Regulation 13(3) read with Regulation 13(5) of PIT Regulations on Ms. Rosy.
- (xvii) The penalty shall be paid by way of demand draft drawn in favour of "SEBI - Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this Order. The said demand draft shall be forwarded to the Division Chief, Integrated Surveillance Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400051.
- (xviii) In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, copies of this Order are being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: May 15, 2014

Signed / ---

Place: Mumbai

Adjudicating Officer

Assume that Ms. Rosy is aggrieved by the above order and wishes to file an appeal before the Securities Appellate Tribunal against the above order. Draft an appeal in about 1,500 words.

(50 marks)

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2. XYZ Ltd., as on date, has two sets of shareholders, namely, promoters (set 'A') and others (set 'C'). It proposes to make a preferential allotment to a new set of investors (set 'B'). The shareholding pattern before and after the preferential allotment would be as under :

<i>Investors sets</i>	<i>% of Shareholding</i>	
	<i>Pre-preferential Allotment</i>	<i>Post-preferential Allotment</i>
A	50	25
B	0	50
C	50	25

In the light of the relevant provisions, discuss the following :

- (a) Whether 'B' is obliged to make an open offer, under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 on acquisition of 50% of shares through preferential allotment and, if so, what is the minimum size of open offer;
(8 marks)
- (b) Whether 'A' can tender shares in the open offer, which 'B' may make under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
(7 marks)
- (c) Whether the shareholding of 'A' would constitute a part of 'public shareholding' under the Securities Contracts (Regulation) Rules, 1957, after the preferential allotment;
(8 marks)
- (d) Whether XYZ Ltd. will be delisted if as a result of open offer, the holdings of 'B' exceed maximum permissible non-public shareholding.
(7 marks)
3. The confluence of hedgers, speculators and arbitrageurs ensures liquidity and efficient price discovery in the commodity derivatives market. Comment.
(5 marks)
4. Critically examine the mechanism of mobilisation of resources through American Depository Receipts.
(5 marks)

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5. Evaluate the following instruments from the perspective of investors :

- (a) Treasury Bills
- (b) Certificate of Deposit
- (c) Commercial Paper.

(5 marks)

6. Write a critique on penal provisions in the Forward Contracts (Regulation) Act, 1952.

(5 marks)

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